IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 12431 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NATUBHAI UTTAMBHAI AUD - Petitioner(s)
Versus
THE COMMISSIONER OF GEOLOGY & MINING & 1 - Respondent(s)

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Appearance :
MR PS PATEL for Petitioner(s) : 1,
MR KRUNAL PANDYA A.G.P. for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 09/05/2007

ORAL JUDGMENT

1. **RULE**. Mr. Krunal Pandya learned A.G.P., waives service of rule on behalf of the respondents. At the request of the learned advocates for the respective parties, the matter is taken up for final hearing today

itself.

2. By this petition, the petitioner has challenged order dated 21st April, 2007 passed by respondent no. 2. By the said order, respondent no. 2 has called upon the petitioner to pay Rs.19,39,300=00 for the alleged excavation of 38,786=00 metric tones in excess to the permissible limit. The record of the petition shows that the petitioner was granted five permit to excavate 8,000=00 metric tone from the land bearing Survey No. 154 to 180 of Government Pond at village Vaktana, Taluka Choriyasi, District Surat. Upon written complaint made by two persons from the village, namely Maheshbahi D. Surti and Bipinbhai T. Naik dated 11th February, 2005, inquiry was made. In the complaint it was alleged that the Sarpanch of the village permitted unauthorized excavation and collected various amounts from the farmers who obtained soil unauthorizedly from the aforesaid site. During inquiry, several statements of the residents of village Vaktana were recorded. Physical verification was also made at the site. On the basis of the same, respondent no. 2 arrived at a conclusion that even after giving concession to the unauthorized excavation which was admitted by the persons whose statements were recorded there was excess excavation to the extent of

38,786=00 metric tone. Respondent no. 2, therefore, held the petitioner liable for the same. In view of this finding, he passed the aforesaid order, directing the petitioner to pay Rs.19,39,300=00 towards the market price of the mineral. The petitioner has been called upon to pay the said amount within 30 days of the order.

3. I have heard Mr. P. S. Patel learned advocate for the petitioner and Mr. Krunal Pandya learned A.G.P., for the respondents. It is submitted by Mr. Patel that without making any detailed inquiry the report is submitted to respondent no. 2 and on the basis of which he has passed the impugned order. He has submitted that the entire inquiry was made behind the back of the petitioner. According to Mr. Patel, the last excavation was done on 15th March, 2003 and thereafter on 24th February, 2005 report has been made. No explanation is coming forth for the belated report. As against that Mr. Krunal Pandya learned A.G.P., has supported the impugned order and has submitted that since it is very clear from the inquiry that it is the petitioner who is responsible for excess excavation of the mineral, respondent no. 2 has rightly sought recovery of the aforesaid amount from him.

4. I have carefully considered the rival submissions and I have also carefully perused the record of the petition. It clearly appears that respondent no. 2 has kept in view the statements of various residents of village Vaktana which were recorded during the inquiry. He has also placed reliance on the panchnama and has come to the conclusion that even after giving concession to the unauthorized excavation done by the persons whose statements were recorded, there is excess drawing of soil to the extent of 38,786=00. However, a bare perusal of the order as well as the record shows that except drawing inference, respondent no. 2 has not referred to or relied on the fact which would positively show that it was the petitioner alone who did unauthorized excavation to the aforesaid extent. There does not appear to be any material on record to show that. It further appears that the entire inquiry has been made in absence of the petitioner. In response to the notice dated 26th July, 2005, the petitioner has submitted his reply. He had demanded personal hearing but from impugned order it does not appear that he was asked to remain personally present at the hearing. It is true that by letter dated 28th September, 2006, he was intimated to remain present on 5th October, 2006, but he had sought adjournment since he had not received certain documents. By his letter dated 11th

November, 2006 he had repeated the request for giving certain documents as also personal hearing but the order does not show whether his request was granted. Even the show cause notice does not indicate on what basis accusation has been made in the said notice. In view of the same, it clearly appears that the impugned order has been passed simply by drawing inference against the petitioner. On mere inferences, the petitioner cannot be saddled with the liability to pay such huge amount. There has to be some positive material on record pointing to the fact that unauthorized excavation was done only by the petitioner and none else. In view of the same, the impugned order is required to be quashed and it is hereby quashed and set aside. Respondent no. 2 is directed to make detailed inquiry afresh and collect the positive material against the petitioner, if there is any, and then only on the basis of such material adjudge the responsible for unauthorized excavation. Respondent no. 2 is also directed to keep the petitioner present during the course of inquiry, if the petitioner so choses.

5. With the aforesaid directions, the petition is allowed. Rule is made absolute with no order as to costs.

[Akshay H. Mehta, J.]

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